537.—A husband gave away a large portion of the community property to two of his children, with his wife's knowledge, but without her consent as required by Civil Code, § 172, amended by Statute of 1891, p. 425. The wife's will made after the death of her husband recited that she intentionally omitted making provision for these two children because her deceased husband had already given them a large portion of the estate. *Held*, that the gift of community property by the husband was voidable, not void, and was ratified and confirmed by the wife's will.

The law of community property is peculiar to those states which were formerly part of the Spanish and French domain in America. All that is acquired during coverture, otherwise than by gift, descent, or devise, becomes the joint property of the two. *Waterman Lumber & Supply Co.* (1913) 159 S. W. (Tex.) 360. In California prior to the Statute of 1891, *supra*, the husband could sell or otherwise dispose of the property; the interest of the wife being considered a mere expectancy, *Robinson v. Magee* (1858) 9 Cal. 81. However, a gift of the property was regarded as beyond the power of the husband, and was voidable at the option of the wife. *Smith v. Smith* (1859) 12 Cal. 216; *Peck v. Brummagin* (1866) 31 Cal. 440. The principal case turns upon the question whether the Statute of 1891, requiring the written consent of the wife to gifts of community property by the husband, made such gifts absolutely void. Under the Spanish and Mexican law, a donation of community property by the husband to the wife or by the wife to the husband was valid if not revoked; but was always revocable during the life of the donor. *Labbe's Heirs v. Abat* (1831) 2 La. 553; *Fuller v. Ferguson* (1864) 26 Cal. 546. The principal case seems to have decided correctly that the gifts by the husband to the two children were only voidable, and were ratified by the subsequent will of the wife. It is, moreover, arguable, that the limitation upon the power of the husband to give away the community property is no greater in the prohibitive effect of the above statute than the limitation upon his testamentary power. The husband cannot by devise or will defeat the wife's right of one-half the community property, although the wife may elect to take under her husband's will instead of taking her statutory portion. The testamentary disposition of the husband is consequently not void but voidable. *Cunna v. Hughes* (1898) 68 Am. St. Rep. (Cal.) 27.

B. L.

MARRIAGE—FRAUD—ANNULMENT ON GROUND OF REFUSAL TO COHABIT.—ANDERS V. ANDERS (1916) 113 N. E. (MASS.) 203.—The respondent married solely in order to secure the right to bear the name of a married woman, with the preconceived intention never to allow marital intercourse. She left her husband, the libellant, at the church-door, and never saw him again. *Held*, that the marriage would be annulled for fraud.

To secure annulment on the ground of fraud it must be shown that an essential of the marital relation has been affected. *Crane v. Crane* (1901) 49 Atl. (N. J. Eq.) 734; *Boehs v. Hanger* (1905) 59 Atl. (N. J. Eq.) 904; *Smith v. Smith* (1898) 68 Am. St. Rep. (Mass.) 440. Formerly unless there had been deception as to the person, no less degree of fraud would

avail to set aside the contract of marriage. *Swift v. Kelly* (1835) 3 Kn. 257. This was extended to cases where there was physical incapacity, and the impotence existed before the marriage. Annulment was decreed after a required cohabitation of three years; or upon medical examination, *G—— v. G——* (1871) L. R. 2 P. 287. Also upon the legal fiction of inferred incapacity from the refusal of the respondent to cohabit. *S—— v. A——* (1878) 3 P. D. 72; *B—— v. B——* [1901] P. 39. The wilful and persistent refusal to consummate the marriage contract was *per se* and irrespective of any inferred incapacity, a sufficient ground for a decree of annulment, even though the husband knew before marriage of his wife's intention not to have intercourse. *Dickinson v. Dickinson* [1913] P. 198. In this country impotence has been held to be a ground for annulment. *Payne v. Payne* (1891) 49 N. W. (Minn.) 230. Likewise misrepresentation as to physical condition. *Reynolds v. Reynolds* (1862) 3 Allen (Mass.) 605. Also fraudulent concealment of the existence of disease. *Smith v. Smith* (1898) 171 Mass. 404. The principal case following the authority of *Dickinson v. Dickinson, supra,* has decreed annulment where no physical incapacity existed.

B. L.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—REFUSAL TO SUBMIT TO OPERATION AS CONTRIBUTORY NEGLIGENCE.—KRICINOVICH V. AMERICAN CAR AND FOUNDRY CO. (1916) 159 N. W. (MICH.) 362.—The plaintiff suffered a compound fracture of the leg while in the employ of the defendant, and was twice operated on by physicians who pronounced this particular injury cured. As he continued to complain of pain, another operation to remove the entanglement of a nerve filament was recommended, but he refused. *Held,* that where the operation was not dangerous and offered a reasonable prospect of success, the plaintiff must submit or relieve the company of its liability to compensate him for his continued incapacity after such refusal.

No court will require submission to an operation where the possibility of death is involved, even though all except forty-eight operations out of twenty-three thousand may have been successful. *McNally v. Hudson & M. R. Co.* (1915) 87 N. J. L. 455, affirmed (1916) 88 N. J. L. 729; *Mattes v. Phila. Traction Co.* (1897) 19 Pa. Co. Ct. 106. The law is not so lenient with a complainant when there is no chance of death. In regard to such cases there is decided conflict. Some courts have held that the burden is on the employer, not only to prove the absolute safety of the operation, but also that it would be successful. On these grounds a plaintiff was justified in refusing to take ether, so as to permit the manipulation of her arm to break down the adhesions around the shoulder joint. *O'Donnell v. R. I. Co.* (1907) 28 R. I. 245. A seaman who refused to permit a slight operation on his injured finger, later being compelled to have it amputated, was permitted to recover because the defandants did not prove that the proposed operation would have saved the finger, although it was found as a question of fact that the plaintiff had been unreasonable in refusing to submit to the operation. *Marshall v. Orient*